IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

CRL.A.No. 768 of 2000()

CC.105/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM , DT.29.1.2000.

.....

APPELLANT: COMPLAINANT

FOOD INSPECTOR,
KUNNAMKULAM MUNICIPALITY.

BY ADV. SRI.A.K.CHINNAN
SMT.K.K.GEETHA

RESPONDENTS:
----

1. **K.K.VASUDEVAN, KAITHAKKAL HOUSE, CHOWWALLOOR, PROPRIETOR AND LICENSEE, PROVISION STORE XV/298, KUNNAMKULAM.**

2. **M.C.JACOB, PARTNER AND NOMINEE OF M/S.M.I.V., CHINNAN, PARTNERSHIP FIRM, PATTAMBI ROAD, KUNNAMKULAM.**

3. **M/S.M.I.V, CHINNAN, PARTNERSHIP FIRM, REP.BY ITS MANAGING PARTNER, PATTAMBI ROAD, KUNNAMKULAM.**

4. **STATE OF KERALA, REP.BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, KOCHI.**

BY ADV. SRI.T.M.CHANDRAN
SRI.V.K.MOHANAN
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl.A. No.768 of 2000

Dated 5th July, 2007

JUDGMENT

The appellant is the Food Inspector who initiated proceedings against the accused for the offence under sections 2(ia) (a) (b) (f) (1), 7(1) of the P.F.A Act, 1954, Rule 5 Appendix B, A. 18. 06.08 of P.F.A Rules 1955 read with Section 16(1-A) of P.F.A. Act 1954.

2. The prosecution case is that the Food Inspector purchased 750 grams of Bengal Gram from the shop of A1 on 17-1-96 and the same was duly packed as per the procedure envisaged and obtained the signature of A1 covering the paper slip and wrapper and body of the packet. The sample when tested was found to contain to be insects damaged and unfit for human consumption. The same was the result of the second sample which was sent to the Central Food Laboratory as well. A2 and A3, the wholesale dealers were implicated on A1 producing the photo copy of the bill.

3. The evidence adduced in the matter consisted of the testimony of PWs 1 and 2, the Food Inspector and the Local Health Authority respectively and Exts.P1 to P24.

4. The trial court acquitted A2 and A3 as it was found that there was no evidence adduced to prove that the photo copy of the bill produced indicated that the commodity was purchased before 12 noon on 17-1-96. The gunny bag in which the Bengal gram was kept for sale contained 35 kilograms whereas as per Ext.P10 bill produced, the quantity is 15 kilograms. So also, the original bill was not produced. So far as A1 is concerned, it was found that in the second sample produced by the Local Health Authority which was forwarded to the Central Food Laboratory, the signature of A1 on the label was found striken off. Subsequently at the time of trial, the 3rd sample was also summoned on the application of the accused. It was found that on the label of the above sample also , the signature seen over the signature of Food Inspector was seen partly erased and could not be identified (violation of Rule 16(c).

Hence, the court below concluded that the sampling has not been properly packed and hence, the accused is entitled to benefit of doubt.

5. It was submitted by the counsel for the appellant/Food Inspector that the circumstances would indicate that the sampling was done correctly and that the signature of A1 was obtained at the time of sampling and as the Ist sample produced before the court and sent for chemical analysis contained signature of A1 and there was no dispute about the same. Rest of the sample were kept with the Local Health Authority and hence if any tempering has taken place, it can only be from the office of the Local Health Authority and that observation of the court suspecting the act of sampling on the part of the Food Inspector is totally unjustifiable. It was also pointed out that a number of officers who were officiating as Local Health Authority has been transferred in the meantime and hence, there is every possibility that it is at the office of the Local Health Authority, the above tampering has been

committed. It appears that the statement of the counsel for the appellant that the observation of the court below doubting the bona fides of the Food Inspector is totally unwarranted is correct. All the same, I find that in the circumstances, A1 is entitled to claim the benefit of doubt and hence, the finding of the court below cannot be faulted on the above grounds. Being an appeal over acquittal, I find no reason to set aside the order of the court below. The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.A. NO. 768 OF 2000

JUDGMENT

5-7-2007.